SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA, Plaintiff, v. OPTIONS PUBLIC CHARTER SCHOOL, EXCEPTIONAL EDUCATION MANAGEMENT CORPORATION, EXCEPTIONAL EDUCATIONAL SERVICES AT OPTIONS PUBLIC CHARTER SCHOOL, INC., DR. DAVID CRANFORD, PAUL S. DALTON, DR. J.C. HAYWARD, DR. DONNA MONTGOMERY, and JEREMY L. WILLIAMS, Defendants.	Civil Action No. 2013 CA 006644 B Judge Craig Iscoe Next Event: Status Hearing October 11, 2013

DEFENDANT HAYWARD'S MOTION TO DISMISS PURSUANT TO RULE 12(b)(6) OF THE D.C. SUPERIOR COURT RULES OF CIVIL PROCEDURE

Pursuant to Rule 12(b)(6) of the D.C. Superior Court Rules of Civil Procedure, Defendant Dr. J.C. Hayward ("Dr. Hayward") respectfully files this Motion seeking dismissal of the Complaint with prejudice as against Dr. Hayward. The Complaint utterly lacks the requisite factual details to state a plausible claim for relief against Dr. Hayward under Rule 12(b)(6). In support of this Motion, Dr. Hayward relies upon the Complaint and her Memorandum of Points and Authorities, which is filed contemporaneously herewith.

Dr. Hayward sought consent from the District of Columbia before filing her motion, and the District does not consent.

WHEREFORE, because the Complaint fails to state a claim upon which relief can be granted as against Dr. Hayward, Dr. Hayward respectfully requests that the Court dismiss each of the claims asserted against her with prejudice.

Respectfully submitted this 9th day of October 2013.

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SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
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DISTRICT OF COLUMBIA, Plaintiff, v. OPTIONS PUBLIC CHARTER SCHOOL, EXCEPTIONAL EDUCATION MANAGEMENT CORPORATION, EXCEPTIONAL EDUCATIONAL SERVICES AT OPTIONS PUBLIC CHARTER SCHOOL, INC., DR. DAVID CRANFORD, PAUL S. DALTON, DR. J.C. HAYWARD, DR. DONNA MONTGOMERY, and JEREMY L. WILLIAMS, Defendants.	Civil Action No. 2013 CA 006644 B Judge Craig Iscoe Next Event: Status Hearing October 11, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October 2013, a copy of the foregoing Defendant Hayward's Motion To Dismiss Pursuant to Rule 12(b)(6) of the D.C. Superior Court Rules of Civil Procedure was served via e-mail and electronic service to:

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I also caused the foregoing Motion to be served on the following via first-class mail:

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT HAYWARD'S MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)

The District of Columbia Attorney General (the "District") filed this action under D.C. Code §§ 29-412(a)(1)(B) and (C), seeking equitable and injunctive relief against Options Public Charter School ("Options PCS") and other corporate and individual defendants who allegedly conspired to enrich themselves at the expense of the school through a pattern of self-dealing, which included lucrative contracts for the closely held corporate defendants and generous bonuses for three of the individual defendants.

Notwithstanding whether an illegal scheme existed, and whether anyone benefitted financially from the scheme, the District unfortunately decided to name as a defendant Dr. J.C. Hayward ("Dr. Hayward"), who not only did not benefit financially from the alleged scheme but was entirely unaware of its existence. Dr. Hayward is a stellar member of the D.C. community and has been a broadcast journalist and anchor on WUSA Channel 9 for a number of years. She

is well known and respected in the community and sits on a number of Boards, including, until recently, the Board of Trustees of Options PCS. Her list of voluntary work in the community is extensive and, in fact, she received no money for being Chair of the Board of Trustees for Options. She does not have an ownership interest in any of the other defendants and did not profit at all from any of the alleged schemes described in the Complaint. During the time she served on the Board at D.C. Charter School, she also served on the Boards on approximately nine other D.C. institutions, including the United Black Fund, the Boys and Girls Club of Greater Washington, the Arena Stage and Providence Hospital.

Unfortunately, because of government overreaching in including Dr. Hayward in this Complaint, and because of her high-profile in the community, she has suffered considerable harm, including being placed on administrative leave at her position at WUSA Channel 9, being banned from making any media appearances that in any way relate to WUSA, being forced to incur legal fees and being the subject of numerous articles in the media linking her to actions alleged in the Complaint against the other defendants.

While Ms. Hayward may be a relevant witness as to her activities connected to the D.C. Charter School, there is nothing in the Complaint to even suggest that she herself participated in misdeeds or received any of the alleged ill-gotten gains. To the contrary, the most reasonable and logical conclusion to be drawn from the allegations in the Complaint is that Dr. Hayward was herself a potential victim if a scheme existed. Accordingly, this case should be dismissed against Dr. Hayward pursuant to Rule 12(b)(6) of the D.C. Superior Court Rules of Civil Procedure because the District fails to state a claim upon which relief can be granted. The Complaint is also legally deficient inasmuch as it fails to include against Dr. Hayward "a demand for judgment for

the relief the pleader seeks," as required by Rule 8(a)(3) of the Supcrior Court Rules of Civil Procedure.

FACTS

ln its Complaint, the District describes in detail a scheme hatched and executed by three of the individual defendants to enrich themselves and the corporations they control at the expensc of Options PCS through a pattern of self-dealing. Compl. ¶¶ 3-4. Specifically, these three individual defendants (Montgomery, Cranford, and Dalton) allegedly took advantage of their executive positions with Options PCS to procure several lucrative contracts and a loan for the two corporations they owned and controlled: Defendant Exceptional Education Management Corporation ("EEMC"), a "for-profit company controlled and run by" Defendants Montgomery, Cranford, and Dalton, *id.* at ¶ 3; and Defendant Exceptional Education Services at Options Public Charter School, lnc. ("EES"), a for-profit corporation "owned and controlled by Defendant Montgomery," *id.* at ¶ 15. While Dr. Hayward is alleged to have "incorporated" EES in or around 2009, *id.* at ¶ 15, the Complaint does not allege that she held any ownership interest in, controlled, or operated, either EEMC or EES at any relevant time. And, in fact, Dr. Hayward has never owned or operated either entity.

The District has identified several transactions beginning in early 2012 that it contends evidence a pattern of self-dealing and misuse of Options PCS:

(1) An April 17, 2012 loan agreement in the amount of $159,000 between Options PCS and EES. Dr. Hayward is alleged to have signed the loan agreement on behalf of Options PCS. However, she is not alleged to have obtained any pcrsonal financial benefit from the loan agreement. *Id.* at ¶ 23;

(2) An April 17, 2012 "Contract for Medicaid Billing Services" between Options PCS and EES. Dr. Hayward is not alleged to have had any connection with this contract. *Id.* at ¶ 24;

(3) A September 14, 2012 "Transportation Services Agreement" between Options PCS and EES and a May 17, 2013 "Supplemental Transportation Agreement." Dr. Hayward is alleged to have signed both of these agreements on behalf of Options PCS. However, she is not alleged to have obtained any personal financial benefit from the agreements. *Id.* at ¶¶ 26-31;

(4) The decision by Options PCS to increase the number of students designated as highly disabled in the 2012-13 school year, which allegedly resulted in a $2.8 million increase in funding for the school. Dr. Hayward is not alleged to have had any involvement whatsoever with the designation of students according to their level of disability. *Id.* at ¶¶ 32-39;

(5) A February 25, 2013 "Management Agreement" between Options PCS and EEMC, pursuant to which EEMC was to provide school management and Medicaid Billing to Options PCS. Dr. Hayward is alleged to have signed the Management Agreement on behalf of Options PCS. She is also alleged to have approved, on behalf of Options PCS, an amendment to the Management Agreement that resulted in EEMC receiving an additional $500,000. However, she is not alleged to have obtained any personal financial benefit from the Management Agreement. *Id.* at ¶¶ 40-49;

(6) A January 28, 2013 lease agreement between Options PCS and the Fritts Group, LLC for additional administrative office space for Options PCS, which was

allegedly then used by EEMC and EES. Dr. Hayward is not alleged to have had any involvement in the decision to rent additional office space. *Id.* at ¶¶ 50-55;

(7) A series of bonus payments to Defendants Montgomery, Cranford, and Dalton in 2012 and 2013. Dr. Hayward is alleged to have "approved...as chair of Options PCS's board" a ten-year anniversary bonus to Defendant Montgomery in the amount of $120,000, or one-half her yearly salary. However, Dr. Hayward is not alleged to have obtained any financial benefit herself from any of the alleged bonuses. *Id.* at ¶¶ 56-60; and

(8) An alleged conflict of interest involving Defendant Jeremy Williams and his efforts to assist Defendants Montgomery, Cranford, and Dalton in evading oversight of their activities by the District of Columbia Public Charter School Board. Dr. Hayward is not alleged to have had any involvement in these activities. *Id.* at ¶¶ 61-63.

In its Prayer for Relief, the District asks the Court for equitable and injunctive relief against the defendants. The only prayer even arguably directed to Dr. Hayward reads as follows: "Enjoin *further* payments from Options PCS to the individual Defendants." (Emphasis added.) However, the Complaint nowhere alleges that Dr. Hayward received any payments—or indeed any financial benefit *whatsoever*—from the transactions described above. Thus, this prayer is clearly directed at Defendants Montgomery, Cranford, and Dalton, *not* Dr. Hayward.

On October 3, 2013, the Court granted much of the relief sought by the District when it entered the Consent Order with Appointment of Receiver and Asset Freeze (the "Consent Order") against Options PCS and Defendants EEMC and EES. The Consent Order was not directed at Ms. Hayward. In fact, as noted in the preceding paragraph, the Complaint does not

seek relief of any kind from Dr. Hayward. As a result, most of the equitable and injunctive relief sought by the District has already been granted, and it is unclear what, if anything, remains to be done as against Dr. Hayward.

ARGUMENT

I. THE COMPLAINT SHOULD BE DISMISSED AS TO DR. HAYWARD UNDER RULE 12(b)(6) FOR FAILURE TO STATE A CLAIM.

A. Standard for Dismissal Under Rule 12(b)(6).

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief...to give the defendant fair notice of what the...claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). In reviewing a motion to dismiss pursuant to Rule 12(b)(6), the court must conduct a two-part analysis. First, the court must accept all well-pleaded facts as true, but may disregard any legal conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'") (citing *Twombly*, 550 U.S. at 557). Second, the court determines whether the facts alleged in the complaint show that the plaintiff has a plausible claim for relief. *Iqbal*, 556 U.S. at 678 ("To survive a motion to dismiss, a complaint must contain sufficient factual matter...to 'state a claim for relief that is plausible on its face.'") (quoting *Twombly*, 550 U.S. at 570). A claim has facial plausibility only if its well-pleaded factual content "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). A possibility of liability is not enough to survive a Rule 12(b)(6) motion: if a "complaint

pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Iqbal*, 556 U.S. at 678.[1]

B. The Complaint Fails To Allege Sufficient Facts To Support a Plausible Claim for Relief Against Dr. Hayward.

Count I of the Complaint asserts a claim for equitable relief under D.C. Code § 29-412.20(a)(1)(B) against Options PCS, and those defendants acting in concert with Options PCS, for allegedly exceeding or abusing the authority conferred upon it by law. Count II of the Complaint asserts a claim for equitable relief under D.C. Code § 29-412.20(a)(1)(C) against Options PCS, and those defendants acting in concert with Options PCS, for allegedly acting contrary to its nonprofit purposes under the Nonprofit Corporations Act. As described more fully below, however, the Complaint fails to allege sufficient facts to support a plausible claim that Dr. Hayward knowingly assisted Options PCS or any of the other defendants in exceeding or abusing Options PCS's authority or causing it to act contrary to its nonprofit purposes. Therefore, the Complaint should be dismissed with prejudice as to Dr. Hayward pursuant to Rule 12(b)(6).

Of the eight transactions listed in the previous section, which form the basis of the District's lawsuit, Dr. Hayward is alleged to have participated in some form or fashion in only four of them. However, while her involvement in these four transactions invariably derives from her position as the chair of the Options PCS Board of Trustees, the Complaint fails to allege what Dr. Hayward's duties as chair were and how her actions or failures to act constituted a violation of any such duties. Furthermore, from none of these four transactions is Dr. Hayward alleged to have obtained a personal financial benefit. Therefore, while it is arguably *possible* on the facts as alleged in the Complaint that Dr. Hayward *might* have participated in the scheme orchestrated by

[1] The *Twombly-Iqbal* standard has been adopted as the law of the District of Columbia. *See Mazza v. Housecraft LLC*, 18 A.3d 786, 790 (D.C. 2011) (vacated on other grounds).

Defendants Montgomery, Cranford, and Dalton, the Complaint stops well short of the line between possibility and plausibility, and it is certainly not reality. In other words, there is absolutely nothing in the Complaint that would justify the Court in drawing the inference that Dr. Hayward actively assisted Options PCS in violating its obligations under D.C. Code §§ 29-412.20(a)(1)(B) or (C).

The Court should consider each of the four transactions in which Dr. Hayward is alleged to have been involved:

First, Dr. Hayward is alleged to have signed on behalf of Options PCS a loan agreement to EES in the amount of $159,000. Compl., ¶ 23. However, the Complaint does not describe the purpose of the loan agreement to EES or even allege that the loan agreement was somehow wrongful or constituted an abuse of Option PCS's authority. Nor does the Complaint provide any facts to even *suggest* that Dr. Hayward was aware any alleged wrongful purpose or that she violated any of her duties to Options PCS by executing the loan agreement on its behalf. The Complaint is absolutely devoid of any facts that would support a plausible claim for relief against Dr. Hayward in connection with the loan agreement to EES.

Second, according to the Complaint, Dr. Hayward, again acting in her capacity as chair of the Options PCS board, allegedly signed a Transportation Services Agreement between Options PCS and EES and later a Supplemental Transportation Agreement, which allegedly increased the base rate of the original agreement. *Id.* at ¶¶ 26-31. The Complaint certainly *suggests* that EES was paid an unreasonably large amount for providing transportation services to the school, but it fails to provide the requisite factual detail that would permit the Court to draw the inference that this amount was *in fact* unreasonably high. For example, although the previous transportation services contractor was allegedly paid only $70,000 during SY2011-12, the Complaint itself

acknowledges that there was a significant increase in overall enrollment in SY2012-13 and a disproportionate increase in the number of highly disabled students at Options PCS during SY2012-13. Although the fact that EES was paid more than the previous contractor may be *consistent* with a scheme to enrich EES and its owners, it would appear to be equally consistent with the fact that enrollment substantially increased from SY2011-12 to SY2012-13. Furthermore, the Complaint fails to provide any factual detail that would support a plausible claim that Dr. Hayward knowingly participated in any such scheme to enrich EES and its owners. The Complaint also does not include *any* allegations that Dr. Hayward failed to fulfill her obligations to Options PCS in signing the transportation services agreements on its behalf or that she somehow exceeded or abused her authority in doing so. Questions such as, did the board review and approve the agreements, and were the agreements reasonable in light of the increased enrollment at the school in the 2012-13 school year, are left completely unanswered by the Complaint. Consequently, the allegations in the Complaint do not support a plausible claim for relief against Dr. Hayward in connection with the Transportation Services Agreement.

Third, Dr. Hayward, acting solely in her capacity as chair of the Options PCS board, is alleged to have signed a Management Agreement with EEMC for the 2013-14 school year. *Id.* at ¶ 46. The Complaint raises the *possibility* that the Management Agreement may not have been approved in strict accordance with the D.C. Code, but it lacks the factual detail necessary to support any such inference. The allegation in Paragraph 45 of the Complaint that "[t]he Management Agreement was not the product of a *bona fide* competitive procurement process" is a mere legal conclusion that cannot, under the *Twombly-Iqbal* doctrine, give rise to a plausible claim for relief against Dr. Hayward. Furthermore, the Complaint does not allege whether the management services contract was the result of a request for proposals under D.C. Code § 38-

1802.04(c)(1)(A)(i) or whether EEMC was the only company to submit a proposal for the management services contract. Compl., ¶¶ 41-42. As to this information, which is essential in deciding (i) whether the management agreement was the result of a competitive procurement process or (ii) whether, under the circumstances, a sole-source procurement was permissible, the Complaint is utterly silent. Furthermore, as it relates specifically to Dr. Hayward, the Complaint fails to provide any factual detail that would support a plausible claim that she failed to fulfill her obligations to Options PCS in signing the Management Agreement on its behalf or that she somehow exceeded or abused her authority in doing so. For instance, did the board review and approve the Management Agreement? Were the payments to EEMC under the Management Agreement reasonable under the circumstances? If not, did Dr. Hayward know, or should she have known, that the payments to EEMC were unreasonable? The Complaint does not venture an answer to these critical inquiries. Moreover, any suggestion that Dr. Hayward violated any of her obligations to the school or abused her authority as its board chair is belied by the undisputed fact that she had no ownership interest in EEMC and therefore did not stand to benefit financially from the Management Agreement. Accordingly, the Complaint fails to provide sufficient factual detail to support a plausible claim against Dr. Hayward.

Fourth, and finally, the Complaint alleges that Dr. Hayward approved an "exorbitant" bonus to Defendant Montgomery in connection with Montgomery's ten-year anniversary with Options PCS. *Id.* at ¶ 57. However, the description of the bonus as "exorbitant" is merely a conclusion; it is not a reasonable inference based on well-pleaded allegations of *fact*. To give rise to a plausible claim against Dr. Hayward on the basis of the bonus that she is alleged to have approved on behalf of Options PCS, the Complaint would need to allege, at a minimum, how much money Options PCS had to spend on bonuses and whether, given the school's financial

circumstances, a bonus of the magnitude alleged to have been approved by Dr. Hayward would have been reasonable. Furthermore, the Complaint fails to provide any factual detail that would support a plausible claim that Dr. Hayward violated any of her duties to Options PCS in approving the bonus on its behalf or that she somehow exceeded or abused her authority in doing so. For instance, did the board review and approve the bonus payment? Did the school have the financial wherewithal to provide the bonus without jeopardizing its financial position or the services it was obligated to provide its students? Again, as to these questions, the Complaint is silent. Certainly, the Complaint does not allege that Dr. Hayward received any funds as a result of this bonus. Consequently, the allegations in the Complaint do not support a plausible claim for relief against Dr. Hayward.

Because the Complaint fails to state a plausible claim for relief against Dr. Hayward on the basis of any supposed violations of her legal duties to Options PCS or any abuse or dereliction of her authority, the Complaint must be dismissed against her pursuant to Rule 12(b)(6).

C. The Complaint Fails To State a Claim Against Dr. Hayward Because It Fails To Put Her on Notice of the Nature of the Claims Against Her as Required by Rule 8(a)(3).

Rule 8(a) of the D.C. Superior Court Rules of Civil Procedure requires that each and every complaint contain as an essential element "a demand for judgment for the relief the pleader seeks." Super. Ct. Civ. R. 8(a)(3). The purpose of this requirement is "to put defendant on notice regarding the nature of the claim" against her. *Lee v. Foote*, 481 A.2d 484, 487 n.8 (1984). Where the Complaint fails to include a demand for judgment against a defendant, it is legally insufficient and fails to state a claim against that defendant. *See Am. Home Assurance Co. v. The Phineas Corp.*, 347 F. Supp. 2d 1231, 1240 (M.D. Fla. 2004) (holding that it was error for the

trial court to enter judgment against all defendants on count one where plaintiff's amended complaint demanded relief against only one of the defendants, in light of the requirement in Rule 8(a)(3) that the pleader identify the remedies and the *parties* against whom the relief is sought).

Here, the District has prayed for equitable and injunctive relief primarily against Options PCS and Defendants EEMC and EES, and most of the requested relief has already been granted by virtue of the October 3, 2013 Consent Order. The only prayer for relief that is even arguably directed to Dr. Hayward asks the Court to "[e]njoin ***further*** payments from Options PCS to the individual Defendants." (Emphasis added.) First, the term "further payments" implies one or more previous payments, and therefore since the Complaint nowhere alleges that Dr. Hayward received any payments or other financial benefit from Options PCS, this prayer is clearly not directed to her but to the other individuals who allegedly received some financial benefit from the pattern of self-dealing outlined in the Complaint. Second, this prayer for relief against the individual defendants has arguably been mooted by the entry of the October 3, 2013 Consent Order, which appointed a receiver over Options PCS and enjoined Options PCS, including its officers, directors, agents, servants, employees, and attorneys, "from making any further payments on behalf of Options PCS to Defendants EEMC or EES, or to any other person or entities affiliated with Defendants EEMC or EES, without prior approval of this Court." Consent Order, pp. 1-2.

It should be clear in light of the foregoing that the Complaint, by omitting a demand for judgment against Dr. Hayward, fails to apprise her of the nature of the District's claims against her. Since the Complaint does not meet the requirements under Rule 8(a)(3) for asserting a viable claim against Dr. Hayward, it should be dismissed with prejudice as against her for failure to state a claim under Rule 12(b)(6).

CONCLUSION

For the foregoing reasons, Dr. Hayward respectfully requests that the Court grant her Motion and dismiss the District's Complaint as against her with prejudice.

Respectfully submitted this 9th day of October 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October 2013, a copy of the foregoing Memorandum of Points and Authorities in Support of Defendant Hayward's Motion To Dismiss Pursuant to Rule 12(b)(6) was served via e-mail and electronic service to:

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I also caused the foregoing Motion to be served on the following via first-class mail:

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ORDER GRANTING DEFENDANT HAYWARD'S
MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)

AND NOW, this ___ day of _____, 2013 having considered Defendant Hayward's Motion To Dismiss the Complaint Pursuant to Rule 12(b)(6) of the D.C. Superior Court Rules of Civil Procedure, and all briefing and argument related thereto, the Court hereby **GRANTS** the Motion.

It is therefore **ORDERED** that the Complaint is dismissed with prejudice as against Defendant Hayward.

_____
JUDGE CRAIG ISCOE

Copies to:

All Counsel of Record